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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Develop an Electricity Integrated
Resource Planning Framework and
to Coordinate and Refine Long-Term
Procurement Planning
Requirements.

Rulemaking 16-02-007

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING, IN PART, AND
DENYING, IN PART, MOTION OF SONOMA CLEAN POWER AUTHORITY
TO SUBMIT INFORMATION UNDER SEAL**

Summary

This ruling grants, in part, and denies, in part, the motion of Sonoma Clean Power Authority (SCP) to allow all community choice aggregators (CCAs) to file certain information under seal as part of the integrated resource plan (IRP) filings due August 1, 2018 in this proceeding.

The portion of the motion related to filing capacity pricing information under seal is granted. The other portions of the motion are denied without prejudice.

CCAs may still file motions to file certain additional information confidentially concurrent with their IRP filings, but those motions must be supported by proof that the public interest in keeping the data or information in question confidential outweighs the public interest in making the information

public, in accordance with the Commission's rules on confidentiality expressed in Decision (D.) 06-06-066 and its associated matrices.

In the meantime, this ruling declines to declare broad categories of information confidential at the outset, until more information is provided by the CCAs about the exact nature of their concerns about market-sensitivity of specific information.

1. Sonoma Clean Power Motion

On June 28, 2018, Sonoma Clean Power Authority (SCP) filed a motion to be allowed to submit certain data required as part of individual integrated resource plan (IRP) filings and containing market-sensitive information to the Commission under seal.

SCP, in its motion, references a similar request made and approved in the resource adequacy rulemaking (R.17-09-020), addressing the same types of information that SCP is concerned about in this proceeding.

In particular, there are five categories of information that SCP identifies as market-sensitive, including:

1. Generic resource adequacy capacity under contract (megawatts (MW))
2. Flexible capacity under contract (MW)
3. Capacity price (dollars per kilowatt-month)
4. System or local capacity (MW)
5. Flexible capacity (MW).

SCP's motion asks that a ruling be issued allowing for filing of this information under seal by all community choice aggregators (CCAs).

SCP represents that this step is necessary because although the Commission has addressed confidentiality designations as applied to market-sensitive procurement information in the past in Decision 06-06-066,

the confidentiality matrices defined in that decision apply only to investor-owned utilities (IOUs) and electric service providers (ESPs), because the decision pre-dates the existence of numerous CCAs.

2. Response of Pacific Gas and Electric Company

On July 13, 2018, Pacific Gas and Electric Company (PG&E) filed a motion for late-filing of a response to the SCP motion, along with its substantive response to the motion. Permission for late-filing of the PG&E response was granted by an administrative law judge (ALJ) ruling on July 26, 2018.

PG&E objects to allowing all CCAs to keep confidential four of the five categories requested by SCP, all except the capacity pricing information (category #3).

PG&E argues that D.06-06-066 makes capacity volume information public, and that PG&E regularly provides such information publicly. Further, they argue it would be unfair for the IOUs and ESPs to be required to make such information public, while allowing CCAs to keep it confidential. Finally, with respect to the ruling issued in the resource adequacy proceeding addressing the same types of information, PG&E argues that the context is very different, affecting data requests that are not part of the formal proceeding record, whereas in this proceeding it is vital for emissions and reliability planning.

3. Reply of Sonoma Clean Power Authority

SCP requested and was informally granted permission to file a reply to PG&E's response, which occurred on July 18, 2018. SCP did not object to PG&E's motion to late-file its response, but did object to the substance of PG&E's response.

SCP argues that all of the types of information included in its original motion are market-sensitive, the release of which would put SCP at a competitive

disadvantage and be damaging to its customers. SCP believes that PG&E is arguing in favor of disclosure in order to benefit its own position as the “dominant seller of capacity-related products in the market.” SCP is concerned that detailed knowledge of its, and other CCAs’, capacity position would allow potential exertion of market power and extraction of above-market rents from its customers. Finally, SCP disagrees with PG&E’s analysis that the resource adequacy context is somehow different from IRP.

4. Discussion

Now that CCAs are an increasing portion of the electricity market and of procurement activity, confidentiality of their data and information similar to IOUs and ESPs needs to be addressed. In the absence of specific guidance from the Commission in this area, the provisions of D.06-06-066 are still in effect. Though D.06-06-066 does not contain a separate set of matrices applied specifically to CCAs, much of the information contained in the matrices for IOUs and CCAs is analogous.

Generally, the Commission favors public disclosure of information. In situations where the applicant or moving party requests to file information under seal, the standard applied by the Commission is to weigh whether the public interest served by keeping information confidential outweighs the public interest in disclosing it. The burden of proof for filing under seal is on the applicant or moving party (in this case, SCP or the CCAs).

In the case of the specific information requested by SCP to be filed under seal by CCAs, capacity pricing information is the only category where the Commission routinely grants confidential treatment. Therefore, I grant this limited portion of SCP’s motion and allow that capacity pricing data

(category #3, in the form of dollars per kilowatt month) may be filed by CCAs under seal as part of their IRP filings.

For the other categories of data, including generic resource adequacy capacity under contract, flexible capacity under contract, system or local capacity, and flexible capacity, I deny the SCP motion without prejudice. This means that I do not, at this time, grant blanket confidentiality treatment for these four categories of capacity volumes based only on the general and categorical assertions included in SCP's June 28, 2018 motion.

However, when filing their IRPs, CCAs may still simultaneously assert that certain information should be filed under seal, with a motion providing specific argument as to why the public interest is in favor of confidentiality rather than disclosure. In doing so, the CCAs should follow the general procedures outlined in D.06-06-066 for proving the market-sensitive nature of the information they wish to file under seal, including references to the matrices approved in that decision, as applicable or appropriate.

IT IS RULED that:

1. The June 28, 2018 Motion of Sonoma Clean Power Authority to Submit Information under Seal is granted, in part, to allow filing under seal of capacity pricing information.
2. The remainder of the June 28, 2018 Motion of Sonoma Clean Power Authority to Submit Information under Seal, with respect to information other than capacity pricing, is denied without prejudice.
3. Community choice aggregators (CCAs) may file motions concurrently with their integrated resource plan filings due August 1, 2018 if they wish to assert that certain information contained in the plans should be filed under seal. In doing so, a CCA shall follow the guidance of

Decision (D.) 06-06-066, including explaining why the public interest in keeping the information confidential outweighs the public interest in making it public. CCAs also shall reference the matrices included in D.06-06-066, where applicable, in making their showings.

Dated July 26, 2018, at San Francisco, California.

/s/ JULIE A. FITCH
Julie A. Fitch
Administrative Law Judge